

November \_\_, 2012

Hon. Margaret Downie  
Chair, Judicial Ethics Advisory Committee  
1501 West Washington Street  
Phoenix, Arizona 85007

Re: Wireless Committee's request for an Advisory Opinion

Dear Judge Downie:

Chief Justice Berch established the Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings (the "*Wireless Committee*") in March 2012 by the entry of Administrative Order 2012-22. This Order directed the Wireless Committee, among other things, to identify to the Judicial Ethics Advisory Committee (the "*Advisory Committee*") any ethical issues arising from this new technology. You have first-hand knowledge of the Wireless Committee's discussion of these issues because you are a member of that committee, but here is a summary.

Judges in Arizona are adapting to, and in many instances embracing, new technology, including social media. Some estimates suggest that half of Arizona judges are already using social media, commonly Facebook, but also Twitter, LinkedIn, Google, and other sites. Facebook users can "*like*" or "*friend*" other users, while those on Twitter can "*follow*" other users.

During their study of judges' use of social media, members of the Wireless Committee learned that other jurisdictions have reached different answers to the same ethics questions. For example, a Florida Court of Appeal in *Domville v. State*, case number 4D12-556, Sept. 5, 2012, agreed with its Judicial Ethics Advisory Committee, that

*"...when a judge lists a lawyer who appears before him as a 'friend' on his social networking page this 'reasonably conveys to others the impression that these lawyer 'friends' are in a special position to influence the judge."*

The appellate court held that Domville's allegations of "*friending*" were sufficient to "*create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial.*" The Court of Appeal therefore disqualified the trial judge.

Less than a week before the *Domville* opinion, a Utah Informal Advisory Opinion had reached a different conclusion. On a virtually identical scenario, the Utah opinion, number 12-01, August 31, 2012, concluded that a judge might allowably be "*friends*" with lawyers who appear before the judge:

*"Being friends with someone is not a violation of the Code of Judicial Conduct. Furthermore, the designation of someone as a 'friend' on a website such as Facebook does not indicate that the person is a friend under the usual understanding of the term.*

**Draft letter to JEAC**  
**Nov 7 2012**

*Many Facebook users have hundreds and even thousands of 'friends.' Whether someone is truly a friend depends on the frequency and the substance of the contact, and not on an appellation created by a website for users to identify those who are known to the user."*

Does Arizona adopt the Florida or the Utah view, or does it draw the line elsewhere? Specifically:

(1) May a judge be "friends" or accept "friend" requests from lawyers who appear before the judge?

(2) If a judge is a "friend" with a lawyer on Facebook, does that require the judge to recuse himself or herself from the lawyer's cases?

(3) Do the ethical rules allow a judge to identify himself or herself on Facebook, by words or by photographs, as a judge?

(4) Do the ethical rules allow a judge to be a "friend" to an elected official, or to a candidate for political office?

The Wireless Committee poses these same questions concerning judicial employees. Would the Advisory Committee's responses be different for a judicial employee versus a judge?

The first two pages of Utah Advisory opinion 12-01 included the four questions above, as well as almost twenty related questions. The Wireless Committee incorporates those other questions by reference. The Wireless Committee believes that the Advisory Committee may combine its answers to these other questions rather than state them separately because the questions raise intertwined issues. The Wireless Committee believes that the issuance of an omnibus advisory opinion will greatly assist Arizona judges in applying the Code of Judicial Conduct to their use of new technology, particularly social media.

Thank you for your assistance.

Yours truly,

By: \_\_\_\_\_  
On behalf of the Wireless Committee